

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
Daniel White Sexton et al.	§	Group Art Unit: 2616
	§	
Application No.: 10/672,043	§	Examiner: Sinkantarakorn, Paware
	§	
Filed: September 26, 2003	§	Confirmation No.: 1099
	§	
For: HIGH PERFORMANCE NETWORK	§	Atty. Docket: 125836-1/YOD/DOO
COMMUNICATION DEVICE AND	§	GERD:0200
METHOD	§	

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October 27, 2008	/Patrick S. Yoder/
Date	Patrick S. Yoder

Dear Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In light of the following remarks, Appellants respectfully request review of the final rejection in the above-referenced application. No amendments are being filed with this Request and this Request is being filed concurrently with a Notice of Appeal. In the Advisory Action mailed October 10, 2008 the Examiner maintained the rejection of claims 1-20. Appellants respectfully request reconsideration of the pending claims in view of the following remarks.

**Legal Error in Rejections of Claims 1-20**

In the Advisory Action, the Examiner maintained the rejection of claims 1-9 under 35 U.S.C. § 102(b) as anticipated by Scott et al., U.S. Patent No. 5,953,340 (hereinafter “Scott”). In addition, the Examiner also maintained the rejection of claims 10, 11, and 13-20 under 35 U.S.C. § 102(a) as anticipated by Matteson et al., U.S. Patent No. 7,164,684 (hereinafter “Matteson”). Appellants respectfully request that these rejections be revised.

***Omitted Features of Independent Claim 1***

Scott fails to anticipate all elements of independent claim 1. Independent claim 1 recites, *inter alia*, “a first portion connectable to a first point and a second point on the bi-directional communication network, said *first portion being configured to manage collisions* among a first set of messages transmittable from said first point to said second point.” (Emphasis added.)

Scott describes a system that includes an adaptive networking device 151 including connector ports 154 capable of interfacing between data devices in a first domain, e.g., in a switch mode using an Ethernet 10Base-T data transmission protocol, and a second domain, e.g., in a repeater mode using an Ethernet 100Base-T data transmission protocol. *See* Scott, FIG. 4; col. 7, line 64 – col. 8, line 3; col. 8, lines 27-29 and 43-45; and col. 9, lines 10-15. Scott further describes a converter 174 that is used to transfer data from a switch module (in the 10 Mbps domain), to a repeater module (in the 100 Mbps domain). *See* Scott, col. 10, lines 25-35. Therefore, data that is transmitted from a connector port 154 attached to a device in the first domain is transmitted to a connector port 154 attached to a device in the second domain via the converter. *See id.*, col. 10, lines 36-47.

The Examiner characterized the switch module 172 of Scott as the recited first portion, the converter 174 of Scott as the recited first point, and the interface circuits 160 of Scott as recited the second point of independent claim 1. *See* Final Office Action, page 2, lines 14-17. The Examiner further suggested the switch module 172 is configured to manage collisions among a first set of messages transmittable from the converter 174 to the interface circuits 160, citing column 10, lines 2-4 and 47-58 of Scott. *See id.*, lines 17-20. Additionally, the Examiner

characterized the repeater module 176 of Scott as the second recited portion, connectable to said first point (converter 174) and said second point (interface circuits 160), the repeater module 176 being configured to transmit free of collision management a second set of messages transmittable from said second point (interface circuits 160) to said first point (converter 174). *See* Final Office Action, page 2, line 18 – page 3, line 4. However, in contrast to the assertion by the Examiner, neither the cited sections, nor the remainder of Scott, describe a *first portion being configured to manage collisions* among a first set of messages transmittable from a first point to a second point.

Indeed, the Examiner stated that Scott teaches “the converter transmits the data to the switch module, where the switch module filters the data packets *to avoid collisions*.” Final Office Action, page 2, lines 19-20. (Emphasis added.) The Examiner has apparently misread Scott. Scott simply *does not* describe filtering data packets *to avoid collisions*, as claimed by the Examiner. Instead, Scott clearly sets forth that the switch module 172 receives data packets from the data devices or networks 18, 20, or 22 (via ports 154 connected to the interface circuits 160). *See* Scott, FIG. 6; col. 9, lines 60-66. The switch module 172 may identify each packet and transmit the packet to a corresponding port 154. *See* Scott, col. 9, line 66 – col. 10, line 2. After identifying the data packets, the switch module 172 may drop packets, *not* as part of collision management, but rather if the data packets are identified as being sent between two devices of a network coupled to the same port 154, i.e. if the data packets are intended for devices in the same domain. *See* Scott, col. 10, lines 2-4, 52-67.

Thus, the Examiner’s suggestion that switch and filtering functions of the switch module 172 of Scott “serve to reduce the amount of traffic by eliminating extraneous traffic” (Advisory Action, page 2) in a manner to avoid collisions misconstrues the teachings of Scott. Elimination of extraneous traffic that has already been received does not reduce, or manage, the traffic coming into the switch module 172, where collisions occur. It merely eliminates packets from being sent from the module 172, *if* those packets are to be sent to a device in an improper domain. There is simply no showing that the filtering performed by the switch module impacts collisions of the traffic either entering or exiting the module 172. Accordingly, the filtering

function of the switch module 172 cannot be read as the first portion *configured to manage collisions* among a first set of messages transmittable from a first point to a second point as recited in independent claim 1.

***Omitted Features of Independent Claims 10 and 18***

Matteson fails to anticipate all elements of independent claim 10 and 18. Independent claim 10 recites, *inter alia*, “a *first plurality of connections* for connecting said hub portion to a plurality of first points on a bi-directional communication network and to a second point on the bi-directional communication network...and a *second plurality of connections* for connecting said switch portion to said plurality of first points and to said second point.” (Emphasis added.) Independent claim 18 recites, *inter alia*, “transmitting a first message from each of a plurality of first points on the bi-directional communication network to a single second point on the bi-directional communication network through a *switch portion* of a communication device; and transmitting a second message from said single second point to each of the same said plurality of first points through a *hub portion* of said communication device.” (Emphasis added.) The Examiner relied upon a single figure, FIG. 5, and focused on a specific passage from Matteson, col. 6, lines 9-32, to support the rejection of claim 10. *See* Final Office Action, page 4 line 16 – page 5, line 16. However, the Examiner has failed to reject all elements of independent claims 10 and 18.

As can be seen at least in FIG. 5 of Matteson, connection ports 36 are utilized to connect the connectivity device 34 to a network. *See* Matteson, col. 2, lines 39-44. Indeed, Matteson specifically describes the connectivity device 34 as providing a network with a single point of connect via communication port 36. *See* Matteson, col. 5, lines 3-7 and 61-65 and col. 6, lines 17-19. Furthermore, connection ports 36 are utilized for connection to *both* the hub portion and the switch portion of communication device 34. *See* Matteson, FIG. 5. Accordingly, since Matteson describes a single point of contact to a network via communication ports 36 utilized by *both* a hub and a switch portion of the communication device, Matteson cannot be read to describe a *first plurality of connections* for connecting a hub portion to a plurality of first points on a bi-directional communication network and a *second plurality of connections* for connecting

a switch portion to the plurality of first points, as recited in independent claim 10, since the connections described by Matteson are the same. Accordingly, Matteson fails to describe all elements of independent claim 10.

Furthermore, there is no showing in Matteson of transmitting a first message from a plurality of first points on a communication network to a single second point on the network through *a switch portion* of a communication device and transmitting a second message from said single second point to each of the same said plurality of first points through *a hub portion* of said communication device, as recited in independent claim 18. The Examiner has failed to show this limitation, suggesting only that it corresponds to recitations set forth in independent claim 10. *See* Final Office Action, page 5. However, Appellants respectfully submit that independent claim 18 recites elements separate from those recited in independent claim 10, and further, because the Examiner has failed to address the aforementioned recitations, the Examiner has failed to establish a *prima facie* case of anticipation under 35 U.S.C. § 102(a).

As such, the prior art of record, taken alone or in hypothetical combination, fails to teach or suggest all elements of independent claims 1, 10, and 18. Therefore, Appellants respectfully request withdrawal of the Section 102 rejection of independent claims 1, 10, and 18, and further request allowance of independent claims 1, 10, and 16, as well as all claims depending therefrom. Accordingly, at least in view of the above remarks, Appellants respectfully request that the Panel instruct the Examiner to withdraw the outstanding rejections under 35 U.S.C. § 102 and allow the pending claims.

Respectfully submitted,

Date: October 27, 2008

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